

No. 3096

United States Circuit Court of Appeals

For the Ninth Circuit

LOST HILLS MINING COMPANY, (a corporation), and UNIVERSAL OIL COMPANY, (a corporation), vs. THE UNITED STATES OF AMERICA,	}	<i>Appellants,</i> <i>Appellee.</i>
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BRIEF FOR APPELLANTS.

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and Appellants.*

Filed this.....day of February, A. D. 1918.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

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STATEMENT

This case, being number 3096 in this court, and A-57 in the court below (Tr. in 3096, p. 3) has the same parties as case numbered 3095 in this court, and A-52 in the court below (Tr. in 3095, p. 3). We have fully briefed number 3095, and it will not be necessary to repeat the discussion here, or to go farther than to point out a distinction of circumstance, not significant, as we view it, between case 3095 and the case now at bar, 3096. To begin with, there is, of course, a local difference in the property involved. Case 3096 is concerned with

the southwest quarter of section 18 in township 26 south, range 21 east, Mount Diablo Meridian,—in Kern County, California. In the next place, the bill in case 3096 was filed June 15, 1916, (Tr., p. 15). The answer was filed August 25, 1916, (Tr., p. 52). It sets up, like the answer in 3095, the pendency of the proceedings in the land department. But those proceedings, unlike the proceedings in the land department set up in 3095, were not begun prior to the filing of the bill of complaint. The patent application in 3096 came intermediately, between the filing of the bill and the filing of the answer. It was filed on July 10, 1916, (Tr. in 3096, p. 39; Tr. in 3095, p. 533).

The reference to page 533 of the transcript in 3095, is explained by the circumstance that, for reasons of convenience, a consolidated statement of the case was prepared for use on appeal in the two Lost Hills cases, numbered below A-52 and A-57 respectively, and, on appeal, 3095 and 3096 respectively, and in the Devils Den case, numbered A-37 below, and, on appeal, 3094 (Tr. in 3095, pp. 184, 185).

It is submitted that the filing of the application for patent, as alleged in the answer in 3096, and the pendency thereafter of the proceeding to acquire title in the Land Department, displaced any general jurisdiction of the court below. (*Cosmos Co. v. Grey Eagle Co.*, 190 U. S. p. 308, and other cases

cited in brief in 3095). The jurisdiction to determine the question of title was and is in the land department, and case 3096 must be ruled by the same principles as control case 3095.

Respectfully submitted,

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